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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,995	07/08/2003	Richard J. Long	101-71	8150

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KEUSEY, TUTUNJIAN & BITETTO, P.C.  
14 VANDERVENTER AVENUE, SUITE 128  
PORT WASHINGTON, NY 11050

EXAMINER

LINDSEY, RODNEY M

ART UNIT PAPER NUMBER

3765

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/614,995

**Applicant(s)**

LONG, RICHARD J.

**Examiner**

Rodney M. Lindsey

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-26 is/are allowed.
- 6) ☒ Claim(s) 1-20 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: basis should be provided for the terms “individually separable” and “order-independent combinations” as now set forth in claim 1 and “nape and brow portions” and “crescent shaped edge” as now set forth in claim 21.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-7, 10, 12-16 and 21-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Marietta et al. '970. With respect to claims 1 and 27 note individually separable order-independent internal pads 28, pad retaining/locating devices 12 with pocket 22 and fastener 18 for attaching the pad retaining/locating devices 12 to a helmet. The internal pads 28 are used in a pad for simultaneously providing cushioning from impact. With respect to claim 2 note the use of Velcro (see column 5, line 12). With respect to claim 3 note the other fastener 26, 27. With respect to claim 4 note the use of Velcro (see column 5, line 56). With respect to claim 5 note the flap as at 15b. With respect to claim 6 note the other fastener 26, 27. With respect to claim 7 note the use of Velcro (see column 5, line 56). With respect to claim 10 note the individual pads 3-7 and at least two of the pads 7,7 being positionable to surround a headband as claimed and

Art Unit: 3765

inherently capable of not overlapping as claimed. With respect to claim 12 note the different shapes of the pads 28, either thin or thick. With respect to claim 13 note the different areas as corresponding to the locations of the pads 3-7. With respect to claim 14 note such areas as shown in Figure 1. With respect to claim 15 note the shapes of the pad retaining/locating devices as at pads 3-7. With respect to claim 16 note the different head areas of the devices 12 as shown by the different locations of the pads 3-7.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marietta et al. '970 in view of Sperber. Marietta et al. do not teach the pads made of a viscoelastic foam. Sperber teaches old pads 18 made of a viscoelastic foam. It would have been obvious to form the pads of Marietta et al. of the viscoelastic foam of Sperber since one of ordinary skill in the art at the time of the invention would readily have recognized the expedience of substituting one pad material for another to achieve a like result of damping an impact to a user.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marietta et al. '970 in view of Barson et al. Marietta et al. do not teach the pad retaining/locating devices being formed of looped knit nylon. Barson et al. teach old looped knit nylon "brushed nylon" for covering a pad 30. It would have been obvious for one of ordinary skill in the art at the time of the invention to form the pad retaining/locating devices of Marietta et al. of the brushed nylon of

Art Unit: 3765

Barson et al. to effect use of an alternative material suitable for engaging the head of a user of the pad.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marietta et al. '970 in view of Morgan '738. Marietta et al. does not teach the semi-circular shape of the individual pads. Morgan teaches old to form pads of semi-circular shape (see for instance Figure 6). It would have been obvious to one of ordinary skill in the art at the time of the invention to form two of the individual pads of Marietta et al. of semi-circular shape in the manner of the pads of Morgan to achieve the advantage of accommodating particular portions of the helmet shell.

8. Claims 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marietta et al. '970 in view of Hendler. Marietta et al. do not teach an outermost pad pocket as claimed. Hendler teaches old the use of an outermost pad pocket as at 29 (see column 3, lines 13-16). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the crown pads 6,7 or Marietta et al. with the outermost pad pocket as at 29 of Hendler to achieve the advantage of assembling the crown pads as a unit. With respect to claim 20 note that the outermost pad pocket would be adapted to allow a headband to lie adjacent thereto.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marietta et al. '970 in view of Hendler as applied to claim 17 above, and further in view of Barson et al. Marietta et al. do not teach the outermost pad pocket being formed of looped knit nylon. Barson et al. teach old looped knit nylon "brushed nylon" for covering a pad 30. It would have been obvious for one of ordinary skill in the art at the time of the invention to form the outermost pad

Art Unit: 3765

pocket of the modified pad set of Marietta et al. of the brushed nylon of Barson et al. to effect use of an alternative material suitable for engaging the head of a user of the pad set.

*Allowable Subject Matter*

10. Claims 21-26 are allowed.

*Response to Arguments*

11. Applicant's arguments filed September 23, 2004 have been fully considered but they are not persuasive. Contrary to applicant's remarks Marietta et al. with just consideration of the shims 28 meet the limitations of claim 1 as now set forth. The rejection of claims 1-20 and 27 ably set forth above is deemed proper in all respects.

*Conclusion*

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

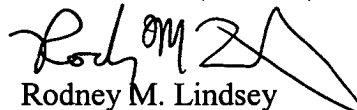
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 3765

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (703) 305-7818. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

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